United States Court of Appeals

for the Second Circuit

APPENDIX

75-1139

B
P/S.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

----------X

UNITED STATES OF AMERICA

Appellee

Docket No. 75-1139

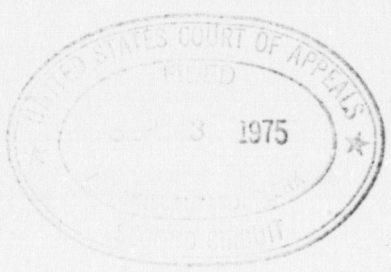
-against-

WILLIE L. HARRINGTON

Defendant-Appellant

----------X

APPENDIX



JOHN C. CORBETT
Attorney for Defendant-Appellant
Office & P.O. Address
66 Court Street
Brooklyn, New York 11201

2

PAGINATION AS IN ORIGINAL COPY

INDEX TO APPENDIX

D. C. Form No. 100

CRIMINAL DOCKET

74CR 223

PLATT, J.

DOOLING

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U. S.: LEVIN-EPSTEIN
vs.	
WILLIE HARRINGTON	
	For Defendant: John Corbett
	66 Court St.- B'klyn NY. 11201

Theft of treasury checks stolen from US mails

ABSTRACT OF COSTS	AMOUNT	CASH RECEIVED AND DISBURSED			
		DATE	NAME	RECEIVED	DISBURSED
Fine,		2/14/75	[illegible]		
Clerk,					
Marshal,					
Attorney,					
Commissioner's Court,					
Witnesses,					

DATE	PROCEEDINGS
2-28-74	Before Bartels J - Indictment filed
3-5-74	Before DOOLING, J.- Case called- Deft and counsel John Corbett present deft arraigned and enters a plea of not guilty- All motion to be filed within 10 days- Deft cont on P.A. Bond
6-1-74	Notice of readiness for trial filed
6-4-74	Before PLATT, J - case called & adjd to June 24, 1974 for trial.
6-24-74	Before PLATT, J - case called - deft & counsel John Corbett present - ready and holding on 72 hours notice.
2-10-75	Before PLATT, J-case called - trial ordered & BEGUN - Jurors selected and sworn - Trial contd to 2-11-75.
2-11-75	Before PLATT, J - case called - trial resumed - trial contd to Feb. 13, 1975.

(47)

74CR 228

DATE	PROCEEDINGS
/11/75	Magistrare's file 73 M 1696 inserted in CR file.
-13-75	By PLATT, J - Order of sustenance filed (Lunch-14 persons)
-13-75	Before PLATT, J - case called - trial resumed - jury returns with a verdict of guilty on each of counts 1 through 10 incl. Jury polled - bail continued - trial concluded - sentence adjd without date.
4-4-75	Before PLATT, J- case called - deft sentenced on count one to imprisonment for 2 years and that the deft shall become eligible for parole under 18 USCA Sec. 4208(a)(2) at such time as the Board of parole may determine - It is adjudged that on counts 2 through 10 of the indictment the deft is hereby sentenced to imprisonment for 2 years and that the term of imprisonment under each count shall be served concurrently with the term of imprisonment in count one and that under each such count the deft shall become eligble for parole under 18 USCA Sec. 4208(a)(2) at such time as the Board of Parole may determine. Clerk to file Notice of Appeal on behal of the deft - Bail contd pending appeal.
-4-75	Judgment & Commitment filed certified copies to Marshal.
-4-75	Notice of Appeal(without fee) filed.
-4-75	Docket entries and duplicate of Notice of Appeal mailed to the Court of Appeals together with Form A.
/75	Voucher for compensation of counsel filed
21/75	Copy of Order received from court of appeals and filed- that record on app be docketed on or before 4/25/75

TPP:EL-E:alo
F.#733968

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - X

UNITED STATES OF AMERICA

- against -

WILLIE L. HARRINGTON,

Defendant.

- - - - - - - - - - - - - - - - - - X

Cr. No. 74 CR 228
(18 U.S.C. §1708)

3-28-74
Dooling, J.

THE GRAND JURY CHARGES:

COUNT ONE

On or about the 1st day of November, 1973, within the Eastern District of New York, the defendant WILLIE L. HARRINGTON did unlawfully have in his possession New York City Department of Social Services Check # 48353110, payable to Ines Rivera, 1695 Grand Ave., Bronx, New York, in the amount of One Hundred and Fifty-eight Dollars ($158.00) which was the contents of a letter stolen from the United States Mail, the defendant knowing the same to have been stolen. (Title 18, United States Code, §1708.)

COUNT TWO

On or about the 1st day of November, 1973, within the Eastern District of New York, the defendant WILLIE L. HARRINGTON did unlawfully have in his possession New York City Department of Social Services Check # 48590114, payable to Peggy Townsend, 1664 Davidson Ave., Bronx, N.Y., in the amount of One Hundred and Fifty-five Dollars ($155.00) which was the contents of a letter stolen from the United States Mail, the defendant knowing the same to have been stolen. (Title 18, United States Code, §1708.)

COUNT THREE

On or about the 1st day of November, 1973, within the Eastern District of New York, the defendant WILLIE L. HARRINGTON did unlawfully have in his possession New York City Department of Social Services Check # 48640781, payable

to Joyce Smith, 78 West 180th St., Bronx, New York, in the amount of One Hundred and Forty-eight Dollars ($148.00) which was the contents of a letter stolen from the United States Mail, the defendant knowing the same to have been stolen. (Title 18, United States Code, §1708.)

COUNT FOUR

On or about the 1st day of November, 1973, within the Eastern District of New York, the defendant WILLIE L. HARRINGTON did unlawfully have in his possession New York City Department of Social Services Check # 32935875 payable to Maria Aviles, 30 West 161st St., Bronx, New York, in the amount of One Hundred and Thirty-five Dollars ($135.00) which was the contents of a letter stolen from the United States Mail, the defendant knowing the same to have been stolen. (Title 18, United States Code, §1708.)

COURT FIVE

On or about the 1st day of November, 1973, within the Eastern District of New York, the defendant WILLIE L. HARRINGTON did unlawfully have in his possession New York City Department of Social Services Check # 48647079, payable to Priscilla Finklestein, 1770 Townsend Ave., Bronx, N.Y., in the amount of One Hundred and Thirty-five Dollars ($135.00) which was the contents of a letter stolen from the United States Mail, the defendant knowing the same to have been stolen. (Title 18, United States Code, §1708.)

COUNT SIX

On or about the 1st day of November, 1973, within the Eastern District of New York, the defendant WILLIE L. HARRINGTON did unlawfully have in his possession New York City Department of Social Services Check # 48343762, payable to Lydia Nateo, 1172 Anderson Ave., Bronx, New York, in the amount of One Hundred and Twenty-eight Dollars ($128.00) which was the contents of a letter stolen from the United States Mail, the defendant knowing the same to have been stolen. (Title 18, United States Code, §1708.)

COUNT SEVEN

On or about the 1st day of November, 1973, within the Eastern District of New York, the defendant WILLIE L. HARRINGTON did unlawfully have in his possession New York City Department of Social Services Check # 48635905, payable to Eunice Winfield, 56 West 180th St., Bronx, New York, in the amount of One Hundred and Twenty-six Dollars and Thirty Cents ($126.30) which was the contents of a letter stolen from the United States Mail, the defendant knowing the same to have been stolen. (Title 18, United States Code, §1708.)

COUNT EIGHT

On or about the 1st day of November, 1973, within the Eastern District of New York, the defendant WILLIE L. HARRINGTON did unlawfully have in his possession New York City Department of Social Services Check # 48643802, payable to Stara Ramhit, 78 West 180th St., Bronx, New York, in the amount of Ninety-three Dollars and Thirty-five Cents ($93.35) which was the contents of a letter stolen from the United States Mail, the defendant knowing the same to have been stolen. (Title 18, United States Code, §1708.)

COUNT NINE

On or about the 1st day of November, 1973, within the Eastern District of New York, the defendant WILLIE L. HARRINGTON did unlawfully have in his possession New York City Department of Social Services Check # 48646666, payable to Esmasalda Martinez, 1931 Walton Ave., Bronx, New York, in the amount of One Hundred Sixty Dollars and Fifty Cents ($160.50) which was the contents of a letter stolen from the United States Mail, the defendant knowing the same to have been stolen. (Title 18, United States Code, §1708.)

COUNT TEN

On or about the 1st day of November, 1973, within the Eastern District of New York, the defendant WILLIE L. HARRINGTON did unlawfully have in his possession New York City Department of Social Services Check # 48633056, payable to Delores Cuevas, 2042 Morris Ave., Bronx, New York, in the amount of One Hundred and Thirty-nine Dollars and Eighty-five Cents ($135.85) which was the contents of a letter stolen from the United States Mail, the defendant knowing the same to have been stolen. (Title 18, United States Code, §1708.)

A TRUE BILL.

FOREMAN.

UNITED STATES ATTORNEY

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- vs -

WILLIE L. HARRINGTON

NOTICE OF APPEAL

File No: 74 CR-228

Notice is hereby given that the defendant WILLIE L. HARRINGTON hereby appeals in forma pauperis to the United States Court of Appeals for the Second Circuit from the final Judgment entered in this proceeding on the 4th day of April 1975

Dated: Brooklyn, New York
April 4, 1975

By Direction of the Court

LEWIS ORGEL, CLERK
U.S. District Court
Eastern District of New York
on behalf of the defendant

fK/ap 1

(The jury took its place in the jurybox.)

THE COURT: I congratulate you all on getting here well as you apparently are in good health and all well. I guess it is just as well we did not try to do it all yesterday. We really would have been in trouble.

We are at the point in the trial as you realize, where I am going to give you instructions on the law. It is my practice to read the instructions.

I realize it is harder for you to follow instructions which are read, but I think this minimizes the possibility of error if I do read it so I will ask you to bear with me and pay attention. If you cannot hear anything that is being said, raise your hand and I will try to keep my voice up which is a little raspy.

Now that you have heard the evidence and the argument, it becomes my duty to give the instructions of the Court to the law applicable in this case.

It is your duty as jurors to follow the law as stated in the instructions of the Court, and to apply the rules of law so given to the facts as you find them to the evidence in the case.

You are not to single out one instruction alone as stating the law, but must consider the instructions

as a whole.

Neither are you to be concerned with the wisdom of any rule of law stated by the Court. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your sworn duty to base a verdict upon any other view of the law than that given in the instruction of the Court; just as it would be a violation of your sworn duty as judges of the facts, to base your verdict upon anything but the evidence of the case.

You must not permit yourselves to be governed by sympathy, bias, prejudice or any other consideration not founded on evidence and these instructions on the law.

Justice through trial by jury must always depend upon the willingness of each individual juror to seek the truth from the facts and from the same evidence presented to all the jurors; and to arrive at a verdict by applying the same rules of law as given in the instructions of the Court.

You have been chosen and sworn as jurors in this case to try the issues of fact presented by the allegations of the indictment and the denial made by the "not guilty" plea of the accused. You are to perform this duty without bias or prejudice as to

any party. Again the law does not permit jurors to be governed by sympathy, prejudice or public opinion. Both the accused and the public expect that you will carefully and impartially consider all of the evidence in the case, follow the law as stated by the Court and reach a just verdict regardless of the consequences.

I am going to send the exhibits which have been received in evidence with you as you retire for your deliberations.

An indictment is but a form or method of accusing a defendant of a crime. It is not evidence of any kind against the accused.

There are two types of evidence from which a jury may properly find a defendant guilty of a crime. One is direct evidence -- such as the testimony of an eye witness. The other is circumstantial evidence -- the proof of facts and circumstances which rationally imply the existence or non-existence of other facts because such other facts usually follow according to the common experience of mankind. Thus, the footprint of a man in the sand, implied to Robinson Crusoe, that there was another man with him on the desert island and indeed there was, the man Friday. That is what we mean by circumstantial evidence.

Thus, on the one hand, you may have direct evidence of the issue and on the other hand you may have circumstantial evidence of the issue. The law does not hold that one type of evidence is necessarily of better quality than the other. The law requires only that the Government prove its case beyond a reasonable doubt, both on the direct and circumstantial evidence. At times the jury might feel that circumstantial evidence is of better quality. At other times they may feel direct evidence is of better quality. The judgement is left entirely to you.

As a general rule, the law makes no distinction between direct and circumstantial evidence, but simply requires that, before convicting a defendant, the jury be satisfied of the defendant's guilty beyond a reasonable doubt from all the evidence in the case.

The law presumes the defendant to be innocent of crime. Thus a defendant, although accused, begins the trial with a "clean slate" -- with no evidence against him. And the law permits nothing but legal evidence presented for the jury to be considered in support of any charge against the

accused. So the presumption of innocence alone is sufficient to acquit a defendant unless the jurors are satisfied beyond a reasonable doubt of the defendant's guilt after careful and impartial consideration of all the evidence in the case.

The burden is always upon the prosecution to prove guilt beyond a reasonable doubt. This burden never shifts to a defendant; for the law never imposes upon a defendant in a criminal case, the duty or burden of calling any evidence or producing any evidence.

A reasonable doubt does not mean a doubt arbitrarily and capriciously asserted by a juror because of his or her reluctance to perform an unpleasant task. It does not mean a doubt arousing from a natural sympathy which we all have for others. It is not necessary for the Government to prove the guilty of the defendant beyond all possible doubt. Because if that were the rule, very few people would ever be convicted. It is practically impossible for a person to be absolutely sure and convinced of any contraverted fact, which by its nature is not susceptible of mathematical certainty. In consequence the law says that a doubt should be a reasonable doubt,

not a possible doubt.

A reasonable doubt is a doubt based upon reason and common sense, the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt must therefore be proof of such a convincing character that you would be willing to rely and act upon it unhesitatingly in the most important of your own affairs.

The jury will remember that a defendant is never to be convicted on mere suspicion or conjecture.

Again, a reasonable doubt means a doubt sufficient to cause a prudent person to hesitate to act in the most important affairs of his or her life.

The statute alleged to have been violated in this case is Section 1708 of Title 18 of United States Code which provides in pertinent part as follows, and this is one of the paragraphs:

"Whoever steals, takes or abstracts from, or out of any Post Office of station thereof, letter box, mail receptacle or any mail route or other authorized depository for mail matter, or from a letter or mail carrier" is in violation of the law.

Another paragraph of the same section reads:

"Whoever buys, receives or conceals, or unlawfully has in his possession, any letter, postal card, package, bag, or mail, or any other article contained therein, which has been so stolen, taken, embezzled, or abstracted as herein described, knowing the same to have been stolen, taken, embezzled or abstracted..." is in violation of the law.

Now, the charge in Count One of the indictment, and as I have heretofor indicated to you, each of the remaining counts is the same, except for the payees, their addresses and the amounts, and I read Count One: "On or about the first day of November, 1973 within the Eastern District of New York, the defendant Willie Harrington, did unlawfully have in his possession, a New York City Department Social Services check #48353110 payable to Inez Rivera, 1695 Grand Avenue, Bronx, New York, in the amount of $158 which was the contents of a letter stolen from the United States mail, the defendant knowing the same to have been stolen."

The essential elements of the crime charged which must be proven beyond a reasonable doubt under this count and each of the other counts are as follows:

First: That the letter and its contents referred to in the indictment were deposited in and sent through the mails;

Second: That the letter and its contents were stolen, taken, embezzled or abstracted from the mails;

Third: That the defendant later received or had the letter or contents in his possession;

Fourth: That at the time of its receipt or his possession, defendant knew the letter or its contents were stolen.

It is not necessary that the defendant knew that the letter or its contents were stolen from the mails. It is necessary only that the defendant knew that the letter or its contents were stolen.

It is not necessary, however, for the Government to prove who stole the letter or any article contained therein or how it was stolen.

A letter properly mailed and never received by the addressee, but found in quite improper and misusing hands, if you find such to be the fact, may be found to have been stolen from the mails in the absence of any other explanation being proffered. In short, you may make common sense inferences from facts which you find have been proven beyond a

reasonable doubt.

The second fact you must find beyond a reasonable doubt in order to convict is that the defendant in question "received" or "possessed" the contents of stolen mail.

The law recognizes two kinds of possession: Actual possession and constructive possession. A person who knowingly has direct physical control over a thing at a given time, is then in actual possession of it.

A person who, although not in actual possession, knowingly has both the power and the intention at a given time to exercise dominion or control over a thing, either directly or through another person or persons is then in constructive possession of it.

The law recognizes that possession may be sole or joint. If one person alone has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or constructive possession of a thing, possession is joint.

Possession of property recently stolen, if not satisfactorily explained, is ordinarily a circumstance from which the jury may reasonably, but

it is not required to draw the inference and find, in the light of surrounding circumstances, shown by the evidence in the case, that the person in possession knew the property had been stolen.

Ordinarily, the same inferences may reasonably be drawn from a false explanation of possession of recently stolen property.

The term "recently" is a relative term, and has no fixed meaning. Where the property may be considered as recently stolen depends upon the nature of the property, and all the facts and circumstances shown by the evidence in the case.

If you find beyond a reasonable doubt from the evidence in the case that the checks described in the indictment were stolen, and that, while recently stolen, the property was in the possession of the accused, you may, but need not, from these facts, draw the inference that the checks were possessed by the accused with knowledge that the property was stolen unless possession of the recently stolen property by the accused is explained to the satisfaction of the jury by other facts and circumstances in evidence in the case.

It is the exclusive province of the jury to

determine whether the facts and circumstances shown by the evidence in the case warrant any inference which the law permits you to draw from possession of recently stolen property.

One of the elements of the crime charged is that the defendant knew that the checks he possessed were stolen. As I have already instructed you, that must be proven beyond a reasonable doubt.

Knowledge is something that you cannot see with the eye or touch with the finger. It is seldom possible to prove it by direct evidence. The Government relies largely upon circumstantial evidence in this case to establish knowledge.

In deciding whether this defendant knew the checks were stolen, you should consider all the circumstances, such as how the defendant handled the transaction, how he conducted himself. Do his actions betray guilty knowledge that he was dealing with stolen checks, or are his actions those of a duped innocent man.

Guilty knowledge cannot be established by demonstrating merely negligence or even foolishness on the part of the defendant.

Knowledge that the goods have been stolen may

be inferred from the circumstances that would convince a man of ordinary intelligence that this is the fact. The element of knowledge may be satisfied by proof that a defendant deliberately closed his eyes to what otherwise would have been obvious to him.

Thus, if you find that the defendant acted with reckless disregard of whether the checks were stolen, and with a conscious purpose to avoid learning the truth, the requirements of knowledge would be satisfied unless the defendant actually believed they were not stolen.

In this connection you should scrutinize the entire conduct of the defendant at or near the time the offenses were alleged to have been committed.

Now as to Exhibit 16, I informed you during the course of the trial that these checks were being received only on the question of the defendant's knowledge and intent and that I would give you a special instruction with respect thereto at this point in the trial. This special instruction is as follows:

The fact that the accused may have committed another offense at some time, is not any evidence or proof whatever that at another time, the accused

committed the offense charged in the indictment even though both offenses are of a like nature. Evidence as to an alleged prior or later offense of a like nature may not therefore be considered by the jury, in determining whether the accused did the act charged in the indictment. Nor may such evidence be considered for any other purpose whatever, unless the jury first finds that other evidence in the case, standing alone, establishes beyond a reasonable doubt, that the accused did the acts charged in the indictment, leaving aside only the question of whether the accused did it knowingly, intentionally and willfully.

If the jury should find beyond a reasonable doubt from the evidence in the case, that the accused did the act charged in the indictment, then the jury may consider the evidence as to an alleged earlier offense of a like nature, in determining the state of mind, knowledge, intent or willfullness with which the accused did the act charged in the indictment. And where all the elements of an alleged earlier or later offense of a like nature are established by evidence which is clear and conclusive, the jury may, but it is not obliged to, draw the inference and find that in doing the act charged in the

indictment the accused acted willfully, knowingly and with specific intent, and not because of mistake or accident or other innocent reason.

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Statements and arguments of counsel are not evidence in the case, unless made as an admission or stipulation of fact. When the attorneys on both sides stipulate or agree as to the existence of a fact, you must, unless otherwise instructed, accept the stipulation as evidence, and regard that fact as proved.

The Court may take judicial notice of certain facts or evidence. When the Court declares it will take judicial notice of a fact or event, you may accept the Court's declaration as evidence, and regard as proved, the fact or event which has been judicially noticed, but you are not required to do so since you are the sole judges of the facts.

Unless you are otherwise instructed, the evidence in the case always consists of the sworn testimony of the witnesses, regardless of who may have called them; and all exhibits received in evidence, regardless of who may have produced them, and all facts which may have been admitted or stipulated; and all facts and evidence which may have

been judicially noticed; and all applicable presumptions stated in these instructions.

Any evidence as to which an objection was sustained by the Court, and any evidence ordered stricken by the Court, must be entirely disregarded.

Evidence does include, however, what is brought out from witnesses on cross examination as well as what is testified to on direct examination.

Unless you are otherwise instructed, anything you may have seen or heard outside the courtroom, is not evidence, and must be entirely disregarded.

You are to consider only the evidence in the case and your verdict is to be based on the evidence only. But in your consideration of the evidence, you are not limited to the full statements of the witnesses. In other words, you are not limited solely to what you see and hear as the witnesses testified. You are permitted to draw from facts which you find have been proved, such reasonable inferences as you feel are justified in the light of experience.

Inferences are deductions or conclusions which reason and common sense lead the jury to draw from the facts which have been established by the

evidence in the case.

To go back for just one moment to the question of knowledge and intent, knowledge and intent ordinarily may not be proved directly, because there is no way of fathoming or scrutinizing the operations of the human mind. But you may infer a defendant's knowledge and intent from the surrounding circumstances. You may consider any statement made and done or omitted by a defendant, and all other facts and circumstances in evidence which indicates his state of mind. It is ordinarily reasonable to infer that a person intends the natural and probably consequences of acts knowingly done or knowingly omitted.

If a lawyer asks a witness a question which contains an assertion of facts, you may not consider the assertion as avidence of that fact. The lawyers' statements are not evidence.

You, as jurors are the sole judges of the credibility of thewitnesses and the weight their testimony deserves.

You should carefully scrutinize all the testimony given, the circumstances under which each witness has testified and every matter in evidence

which tends to show whether a witness is worthy of belief. Consider each witness's intelligence, motive and state of mind and demeanor and manner while on the stand. Consider the witness's ability to observe the matters to which he has testified, and whether he impresses you as having an accurate recollection of these matters. Consider any relation each witness may bear to either side of the case; the manner in which each witness might be affected by the verdict; and the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause the jury to discredit such testimony. Two or more persons witnessing an incident or a transaction may see or hear it differently; an innocent misrecollection, like failure of recollection is not an uncommon experience. In weighing the effect of a discrepancy always consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood.

After making your own judgement, you will give the testimony of each witness, such credibility if any, as you may think it deserves.

Other testimony of a witness may be discredited or impeached by showing that he previously made statements which are inconsistent with his present testimony. The earlier contradictory statements are admissible only to impeach the credibility of the witness, and not to establish the truth of these statements. It is the province of the jury to determine the credibility, if any, to be given the testimony of a witness who has been impeached.

If a witness is shown knowingly to have testified falsely concerning any material matter, you have a right to distrust such witness' testimony in other particulars; and you may reject all of the testimony of that witness or give it such credibility as you may think it deserves.

A defendant who wishes to testify, however, is a competent witness; and the defendant's testimony is to be judged in the same way as that of any other witness.

The law permits a defendant at his own request to testify in his own behalf. The testimony of an

individual defendant is before you. You must determine how far it is credible. The deep personal interest which every defendant has in the result of his case should be considered in determining the credibility of his testimony. You are instructed that interest creates a motive for false testimony; that the greater the interest the stronger is the temptation and that the interest of the defendant is of a character possessed by no other witness, and is therefore, a matter which may seriously affect the credence that should be given to his testimony.

You should bear in mind as I said before, you should scrutinize the testimony of all witnesses and weigh their testimony in the light of their interest which they may have in the case. This includes the Government's witnesses, of course, as well.

Now, there has been character evidence which was produced by the defendant in this case.

There has been testimony here to the previous good character of the defendant. You should consider such evidence of character together with all the other facts, with respect to the guilt or innocence of the defendant. Evidence of good character may

in itself create a reasonable doubt where without such evidence no reasonable doubt may have existed. But if on all the evidence you are satisfied beyond a reasonable doubt that the defendant is guilty, a showing that he had previously enjoyed a reputation of good character, does not justify or excuse the offense, and you should not acquit a defendant merely because you believe he is a person of good repute.

The testimony of a character is not to be regarded by you as expressing the witness's personal opinion of the defendant's character, nor is it to be taken by you as the witness's opinion as to the guilty or innocence of the defendant. The guilt or innocence of the defendant is for you and you alone to determine.

It is the duty of the attorney on each side of a case, to object when the other side offers testimony or evidence which the attorney believes is not properly admissible. You should not show prejudice against an attorney or his client because the attorney has made objections.

Upon allowing testimony or other evidence to be introduced over the objections of an attorney, the Court does not, unless expressly stated, indicate

any opinion as to the weight or effect of such evidence. As stated before, the jurors are the sole judges of the credibility of all witnesses and the weight and effect of all evidence.

When the Court has sustained an objection to a question addressed to a witness, the jury must disregard the question entirely and may draw no inference from the wording of it or speculate as to what the witness would have said if he had been permitted to answer any question.

The fact that the Court has asked one or more questions of a witness for clarification or admissibility of evidence purposes, is not to be taken by you in any way as indicating that the Court has any opinion as to the guilty or innocence of the defendant in this case, and you are to draw no such inference therefrom. As heretofore indicated, the Court has no such opinion. That determination is up to you and you alone based on all the facts in this case and the applicable law in this instruction.

You are here to determine the guilt or innocence of the accused from the evidence in the case. You are not called upon to return a verdict

as to the guilt or innocence of any other person or persons. So, if the evidence in the case convinces you beyond a reasonable doubt of the guilt of the accused, you should so find, even though you may believe one or more other persons are guilty. But if any reasonable doubt remains in your minds after impartial consideration of all the evidence in the case, it is your duty to find the accused not guilty.

The verdict must represent the considered judgement of each juror. In order to return a verdict it is necessary that each juror agree thereto. Your verdict must be unanimous.

It is your duty as jurors, to consult with one another, and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgements. Each of you must decide the case for himself but do so only after an impartial consideration of the evidence in the case with your fellow jurors. In the course of your deliberations do not hesitate to reexamine your own views, and change your opinion if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence, solely because of the opinion of your fellow jurors, or for the mere

purpose of returning a verdict.

If any reference by the Court to matters of evidence does not coincide with your recollection, it is your recollection which should control during your deliberations.

The punishment provided by law for the offenses charged in the indictment is a matter exclusively within the province of the Court and should never be considered by the jury in any way, in arriving at an impartial verdict as to the guilt or innocence of the accused.

Upon retiring to the juryroom, the lady seated in the front row nearest to me, juror #1, will act as your Forelady, unless she elects not to do so, in which case, you will elect one of your number to act as your Foreman or Forelady, as the case may be. The Forelady will preside over your deliberations and will be your spokesman here in Court.

Remember at all times, you are not partisans, you are judges -- judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

There is nothing peculiarly different from the way a jury should consider the evidence in a

case, from that in which all reasonable persons treat any question depending upon evidence presented to them. You are expected to use your good sense; consider the evidence in the case for only those purposes for which it has been admitted and give it a reasonable and fair construction in the light of your common knowledge of the natural tendencies and inclinations of human beings.

If the accused be proved guilty beyond a reasonable doubt, say so. If not so proved guilty, say so.

You must render a verdict with respect to each of the ten counts in the indictment that I have described to you.

If it becomes necessary during your deliberations to communicate with the Court, you may send a note by a bailiff, signed by your foreman, or by one or more members of your jury. No member of the jury should ever attempt to communicate with the Court by any means other than a signed writing and the Court will never communicate with any member of the jury on any subject touching upon the merits of the case, otherwise than in writing or orally here in open court.

You will note from the oath about to be taken

by the deputy marshals that they too, as well as other persons are forbidden to communicate in any way or manner, with any member of the jury, touching on the merits of the case.

Bear in mind also that you are never to reveal to any person -- not even to the Court -- how the jury stands, numerically or otherwise, on the question of the guilt or innocence of the accused, until after you have reached a unanimous verdict.

Now, those are the instructions, Ladies and Gentlemen, and the procedure which we follow at this point is that I excuse you for a few minutes while I discuss the questions of law with counsel.

(The jury left the jurybox and the courtroom.)

MR. LEVIN-EPSTEIN: Only one point, your Honor. As we discussed at the sidebar partly through the trial and as Mr. Corbett pointed out, there are four counts in the indictment in which typographical errors have resulted in the amounts of the checks being different from the amounts actually imprinted upon the checks in some cases, as much as $.50 and I will ask the Court to instruct the jury that the amounts of each check are surplussage in the indictment and need not be considered as part of their deliberations.

THE COURT: It makes reference to the specific amount of money, although it is not necessary to establish precise amounts, I will give them that instruction.

MR. LEVIN-EPSTEIN: If the Court please, I will read for the record what the differences are so the Court is aware of them.

In Count Two of the indictment, the allegation is the check was made out in the amount of $155. In actuality, that check named in Count Two is made out in the amount of $155.50.

In Court Four of the indictment the allegation is the check was issued in the amount of $135. In actuality, the check alleged in Count Four as having been stolen is made out in the amount of $135.50.

In Count Five of the indictment, the amount of the check is alleged to have been $135. In actuality the check named in Count Five is prepared in the amount of $131.15. I believe that is the largest difference.

In Count Ten of the indictment, it specifies the check in the amount of $139.85 and then it says $135.85 and I can indicate to the Court the correct amount is $139.85 as written out.

Those are the differences. I do not believe they are significant. It is the position of the Government that the amount of the checks for the purposes of jury consideration are irrelevant, and in one sense surplussage, and need not be considered by the jury.

THE COURT: That is not the issue anyway.

MR. LEVIN-EPSTEIN: The only issue as far as $107.08 is concerned, is that the defendant knowingly possessed stolen mail, no matter what the amount was.

MR. CORBETT: Your Honor, this is a vexing problem because at this time I do not see how we can alter the amounts in the indictment.

THE COURT: He is not asking that. He is asking the jury be given a standard instruction that the precise amount alleged need not be proven and may be more or less. In this case I think it is correct.

MR. CORBETT: I respectfully accept.

THE COURT: You have the amounts, what are you worried about? I have given them the instruction applicable to this case.

MR. CORBETT: No exceptions with the sole exception that I have just entered on the record.

Other than that I have no exceptions and no further requests to charge.

MR. LEVIN-EPSTEIN: Nothing from the Government.

THE COURT: Bring the jury in.

(The jury took its place in the jurybox.)

THE COURT: Counsel for the Government has indicated, there are I believe four discrepancies in the amounts, very small discrepancies in the amounts stated in the four counts of the indictment in the amount of the checks, whether they be typographical or otherwise.

I think the general rule is that where an indictment as in this case makes reference to specific amounts of money, ordinarily it is not necessary to establish the precise amount alleged in the indictment and the prosecution may succeed by establishing some substantial amount which may be more or less than the amount charged in the indictment. If the figures do not mesh completely in every case, it is not material.

The question of course is whether the accused was in the possession of the contents of stolen mail knowing the same to have been stolen as I have indicated to you.

All right, Ladies and Gentlemen of the jury, as soon as we can get a couple of marshals here, we will swear then in and then you will be able to begin your deliberations.

(The marshals were duly sworn.)

THE COURT: The alternate jurors at this point are excused. You go with the thanks of the Court. In this particular case your services were not needed, but in many cases they are. In the last few months I can recall three or four alternates who had to serve in place of jurors who have been taken ill. Your fellow jurors have all been very healthy during the course of the trial and your services have not been needed. You do perform a valuable service, as I am sure you realize, and you go with the thanks of the Court. You are excused. Go back to the central jury room.

The other twelve jurors may go to the jury-room and begin your deliberations.

If your deliberations carry beyond or if they look like they are going to carry beyond 12:00, notify the marshal as to whether you want to send out for lunch on this cold day, or whether you want them to arrange for lunch being brought in and they will

make arrangements if you do not want to go out to bring in whatever you like.

(The jury left the courtroom.)

THE COURT: I said I was going to send in the exhibits. Would you give them to me and I will give them to the deputy marshal.

MR. LEVIN-EPSTEIN: I have them. Also the Government will prepare a copy of the indictment.

THE COURT: No, unless they ask for it I do not intend to send in for the indictment.

Hand them to the marshal. Do you wish to check them?

MR. CORBETT: I will just look at them. Fine.

THE COURT: Send them to the jury.

MR. CORBETT: I shall remain in the vicinity of the courtroom as is my usual custom.

THE COURT: If the Sandra Shapiro case, which is my next case, wants a jury, I will probably take this jury at lunchtime, and put them in Judge Rayfiel's juryroom.

(Whereupon a recess was taken until 11:40 a.m.)

THE COURT: The jury has apparently reached a verdict. Mr. Harrington, would you come up to the defense table please.